

**California Regional Water Quality Control Board
Santa Ana Region
Staff Report**

January 22, 2004

ITEM: 15

SUBJECT: Order No. R8-2004-0015 Affirming Administrative Civil Liability Complaint
No. R8-2003-0134, Southwest School & Office Supply, Ontario, San
Bernardino County

BACKGROUND

On December 12, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0134 to Southwest School & Office Supply for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL (attached), the Executive Officer proposed an assessment of \$3,000 for the alleged violation of failing to submit an Annual Report by the required date, with the condition that if the 2002-2003 Annual Report is submitted by the permittee by January 5, 2004, \$1,000 of the \$3,000 assessment will be suspended.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2004-0015 that affirms the proposed administrative civil liability complaint against Southwest School & Office Supply.

ACL No. R8-2003-0134 was issued by the Executive Officer to Southwest School & Office Supply for failing to submit an Annual Report as required by the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board. One of the requirements of the General Permit is that permittees submit, by July 1 of each year, an annual report that documents: storm water sampling and analysis; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and a certification as to the accuracy of the submitted information.

Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to Southwest School & Office Supply, indicating that a copy of the blank 2002-2003 Annual Report form could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Noncompliance (NNC) was issued to Southwest School & Office Supply, by certified mail, on August 1, 2003. The return receipt

showed it was received on August 1, 2003. When Board staff received no response to the first NNC, a second NNC was issued on September 17, 2003, again by certified mail, and was received on September 18, 2003. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 18, 2003.

On October 20, 2002, Board staff called Mr. Brent Stickler and reminded him about the annual report and about the mandatory penalties for non-submittal of the annual report. On December 4, 2004, Board staff called Southwest School & Office Supply and spoke to Lisa Barber regarding the submittal of the annual report. Board staff reiterated the penalty conditions and advised her to submit the annual report. To date, the annual report has not been received by this office.

Southwest School & Office Supply failed to submit the required Annual Report to the Regional Board within 60 days from the date on which the original Notice of Noncompliance was sent. Under those circumstances, California Water Code Section 13399.33(c) requires that a mandatory penalty shall be administratively imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000).

Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The Water Code specifies factors the Board shall consider in the establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger was fully aware of the requirements of the General Permit to submit an Annual Report by the July 1 deadline. As of December 29, 2003, this office had not received the 2002-2003 Annual Report for this facility.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

There is no prior history of violations.

4. Degree of Culpability

Southwest School & Office Supply submitted an NOI and agreed to comply with the terms and conditions of the General Permit. Southwest School & Office Supply is therefore fully culpable for violating the General Permit, which implements the Clean Water Act. Finally, in addition to the two NNCs, staff contacted Southwest School & Office Supply personnel, reminding them of the requirement to submit the Annual Report and the consequences of non-submittal.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By not preparing an Annual Report, Southwest School & Office Supply saved approximately \$500 or more, based on whether facility personnel performed and documented the visual observations and runoff sampling requirements set forth in the General Permit.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm, and consistent. The above-described administrative civil liability complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2004-0015, affirming the assessment of \$3,000 specified in Administrative Civil Liability Complaint No. R8-2003-0134 issued by the Executive Officer on December 12, 2003.

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)
)
Southwest School & Office Supply)
805 N. Barrington Avenue)
Ontario, CA 91764-5118)
)
Atten: Mr. Brent Stickler)

**Order No. R8-2004-0015
for
Administrative Civil Liability**

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on January 22, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2003-0134, dated December 12, 2003, and on the recommendation for the imposition of administrative civil liability pursuant to California Water Code sections 13385 and 13399.33 in the amount of \$ 3,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Southwest School & Office Supply is authorized to discharge storm water under the Permit, WDID 8 36I017231. The Permit requires Southwest School & Office Supply to submit an annual report by July 1 of each year. Prior to the July 1, 2003 deadline, the SWRCB mailed a notice to Southwest School & Office Supply indicating that the blank annual report form was available from the website and a hard copy would only be mailed if requested. Southwest School & Office Supply did not submit the annual report by July 1, 2003. Subsequently, Board staff sent two certified Notices of Noncompliance (NNCs) to Southwest School & Office Supply, the first one on August 1, 2003 and the second one on September 17, 2003. These NNCs reminded Southwest School & Office Supply that the annual report had not been received and that there is a mandatory penalty for non-submittal of the annual report. The second NNC required Southwest School & Office Supply to submit the annual report by October 18, 2003. Southwest School & Office Supply was also reminded by phone to submit the annual report.
2. Southwest School & Office Supply failed to submit the annual report to the Board office within 60 days from the date of the original Notice of Noncompliance.
3. Water Code Section 13399.33(c) requires the Board to assess a mandatory minimum penalty of one thousand dollars (\$1,000) and Section 13385 allows the Board to assess additional penalties for violations of Waste Discharge Requirements.

4. On December 12, 2003, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2003-0134 to Southwest School & Office Supply, proposing that the Board impose civil liability in the amount of \$3,000 on Southwest School & Office Supply for the violations cited above. The complaint further proposed that \$1,000 of this amount would be suspended if the annual report were received by January 5, 2004.
5. To date, the annual report has not been submitted.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Southwest School & Office Supply, in the amount of \$3,000 as proposed in Complaint No. R8-2003-0134 for the violations cited, payable as set forth below.

1. Southwest School & Office Supply shall pay the entire amount due to the State Water Resources Control Board by February 23, 2004.
2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on January 22, 2004.

Gerard J. Thibeault
Executive Officer

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2003-0134
)	for
Southwest School & Office Supply)	Administrative Civil Liability
805 N. Barrington Avenue)	
Ontario, CA 91764-5118)	
)	
<u>Atten: Mr. Brent Stickler</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 and 13899.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on January 22, 2004 at the City Council Chambers, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Southwest School & Office Supply, located at 805 Barrington Avenue in Ontario, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). Your facility's WDID Number is 8 36I017231. The General Permit requires you to submit an annual report by July 1 of each year.
5. Prior to the July 1, 2003 deadline, a notice from the State Water Resources Control Board (SWRCB) was mailed to Southwest School & Office Supply, indicating that a copy of the blank 2002-2003 Annual Report form could be accessed via the internet, and that a hard copy would only be mailed if requested. Because the annual report was not received by Board staff by the July 1, 2003 deadline, a Notice of Non-Compliance (NNC) was issued to Southwest School &

Office Supply, by certified mail, on August 1, 2003. The return receipt showed it was received on August 1, 2003. When Board staff received no response to the first NNC, a second NNC was issued on September 17, 2003, again by certified mail, and was received on September 18, 2003. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs identified the mandatory minimum penalty for failure to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by October 18, 2003.

6. On October 20, 2002, Board staff called Mr. Brent Stickler and reminded him about the annual report and about the mandatory penalties for non-submittal of the annual report. On December 4, 2004, Board staff called Southwest School & Office Supply and spoke to Lisa Barber regarding the submittal of the annual report. Board staff reiterated the penalty conditions and advised her to submit the annual report. To date, the Board has not received the annual report. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2003.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2002-2003 Annual Report, the facility is alleged to have violated the General Permit for 166 days (from July 2, 2003 to December 12, 2003). The maximum liability for this violation is \$1,660,000.
9. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a mandatory, minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that civil liability be imposed on Southwest School & Office Supply in the amount of \$3,000 (of this amount, \$1,000 will be suspended if the annual report is received by this office by January 5, 2004) for the violation cited above.

December 12, 2003

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board, for the amount of the penalty proposed under Paragraph 10. The bottom portion of the invoice, the waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Milasol Gaslan at (909) 782-4419, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

12-12-03

Date



Gerald J. Thibeault
Executive Officer

In the matter of:)
)
Southwest School & Office Supply)
805 N. Barrington Avenue)
Ontario, CA 91764-5118)
)
Atten: Mr. Brent Stickler)

Complaint No. R8-2003-0134
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Southwest School & Office Supply to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0134.

I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$3,000 (\$2,000 if the annual report is received by this office by the January 5, 2004 deadline). I understand that I am giving up the right of Southwest School & Office Supply to be heard and to argue against allegations made by the Executive Officer in this Complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for Southwest School & Office Supply



California Regional Water Quality Control Board

Santa Ana Region



Terry Tamminen
Secretary for
Environmental
Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
(909) 782-4130 • Fax (909) 781-6288
<http://www.swrcb.ca.gov/rwqcb8>

Arnold Schwarzenegger
Governor

December 12, 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brent Stickler
Southwest School & Office Supply
805 N. Barrington Avenue
Ontario, CA 91764-5118

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2003-0134

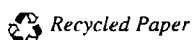
Dear Mr. Stickler:

We are enclosing a certified copy of Complaint No. R8-2003-0134, proposing administrative civil liability of \$3,000 for violations of the California Water Code and the State's General Permit for Storm Water Discharges Associated with Industrial Activity, Order No. 97-03-DWQ, NPDES No. CAS000001. Of this amount, \$1,000 will be suspended if the annual report is received by this office by January 5, 2004. An invoice for this amount is also enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 22, 2004. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have the option to waive your right to a hearing. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check or money order for \$3,000 (\$2,000 if the annual report is received by this office by the January 5, 2004 deadline). The check or money order should be made payable to the State Water Resources Control Board. The waiver form, the bottom portion of the invoice and the check or money order should be mailed to Sacramento using the enclosed envelope. All other correspondence regarding this Complaint should be sent to this office at the address on this letterhead.

California Environmental Protection Agency



Mr. Brent Stickler
Southwest School & Office Supply

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December 12, 2003

If you do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to January 5, 2004. At that time, you may submit information that may not have been previously available to staff regarding this matter.

If you have any questions regarding this complaint, you may contact Mary Bartholomew at (909) 321-4586 or Milasol Gaslan at (909) 782-4419. All legal questions should be referred to our legal counsel, Jorge Leon, at (916) 341-5180.

Sincerely,



Gerard J. Thibeault
Executive Officer

Enclosures: Complaint No. R8-2003-0134, Waiver Form, Invoice, and envelope

cc: State Water Resources Control Board, Division of Water Quality – Bruce
Fujimoto
State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Kathi Moore
San Bernardino County, Storm Water Program, NPDES Coordinator – Naresh
Varma
City of Ontario, NPDES Coordinator – Steve Wilson